

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ALPHONSE NORIEGA,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants.

Case No. C07-1389-JLR-JPD

REPORT AND RECOMMENDATION

Plaintiff Alphonse Noriega, an inmate at the Monroe Correctional Complex in Monroe, Washington, is proceeding *pro se* and *in forma pauperis* in his attempt to bring a 42 U.S.C. § 1983 civil rights claim against the Washington State Department of Corrections (“DOC”), the Monroe Correctional Complex (“MCC”), and several MCC employees, only two of which are named in the caption or body of his complaint. The gravamen of plaintiff’s complaint is that these defendants have “committed great staff misconduct, abuse of authority, & discrimination” by denying plaintiff’s request to be transferred to the Stafford Creek Correctional Center. Dkt. No. 12 at 3, 6. On September 21, 2007, this Court granted plaintiff’s IFP application, see Dkt. No. 7, but declined to serve his complaint due to several specified deficiencies. Dkt. No. 10. The Court granted petitioner leave to correct these deficiencies by filing an amended complaint. Plaintiff has filed an amended complaint, see Dkt. No. 12, but has failed to cure the deficiencies outlined by the Court. Accordingly, the Court

01 recommends that plaintiff's complaint be DISMISSED without prejudice.

02 Pursuant to 28 U.S.C. § 1915(e)(2)(B), this Court should dismiss an action if, among  
03 other things, it is frivolous or if the complaint fails to state a claim upon which relief can be  
04 granted. *See* 28 U.S.C. § 1915(e)(2)(B)(i)-(ii); *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th  
05 Cir. 1990). An action is frivolous if "it lacks an arguable basis either in law or in fact." *Neitzke*  
06 *v. Williams*, 490 U.S. 319, 325 (1989).

07 Plaintiff has once again failed to allege sufficient facts to place defendants on notice of  
08 the nature of his claims, or to otherwise provide any basis for jurisdiction in this Court. *See*  
09 Fed. R. Civ. P. 8(a). His amended complaint provides no short and plain statement of how  
10 each individual defendant violated or personally participated in the violation of certain of  
11 plaintiff's constitutional rights. *See, e.g., Arnold v. Int'l Bus. Machs. Corp.*, 637 F.2d 1350,  
12 1355 (9th Cir. 1981).

13 More importantly, the alleged constitutional right at issue and sole form of relief  
14 plaintiff seeks—transfer—is not cognizable in this § 1983 action. A prisoner has no  
15 constitutional right to incarceration in a particular institution. *See Olim v. Wakinekona*, 461  
16 U.S. 238, 245 (1983); *United States v. Brown*, 59 F.3d 102, 105 (9th Cir. 1995) (per curiam).  
17 Furthermore, to the extent that plaintiff's complaint can be interpreted to include a claim for  
18 failure to protect, he has failed to state a claim under the Eighth or Fourteenth Amendments,  
19 for many of the same reasons outlined by this Court's Order declining service. *See Leer v.*  
20 *Murphy*, 844 F.2d 628, 633 (9th Cir. 1988) (Eighth Amendment); *Redman v. County of San*  
21 *Diego*, 942 F.2d 1435, 1440 n.7 (9th Cir. 1991) (en banc) (Fourteenth Amendment).

22 The Court advises plaintiff of his responsibility to research the facts and law before  
23 filing an action to determine whether his action is frivolous. If he files a frivolous action, he  
24 may be sanctioned. *See* Fed. R. Civ. P. 11. If plaintiff files numerous frivolous or malicious  
25 actions, the court has the authority to bar him from proceeding on an IFP basis in the future.  
26 *See DeLong v. Hennessey*, 912 F.2d 1144, 1146-48 (9th Cir. 1990) (discussing bar order

01 requirements).

02 Accordingly, because of the deficiencies in plaintiff's complaint, this action should be  
03 DISMISSED without prejudice. *See* 28 U.S.C. § 1915(e)(2)(B). As a result, plaintiff's  
04 motions for "Temporary Removal and Transport" (Dkt. Nos. 9, 11, 13) are DENIED as moot.

05 A proposed Order of Dismissal accompanies this Report and Recommendation. If plaintiff  
06 believes that the deficiencies outlined herein can be cured by an amendment to his Complaint,  
07 he should lodge an Amended Complaint as a part of his objections, if any, to this Report and  
08 Recommendation.

09 DATED this 23rd day of October, 2007.

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12 JAMES P. DONOHUE  
13 United States Magistrate Judge  
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